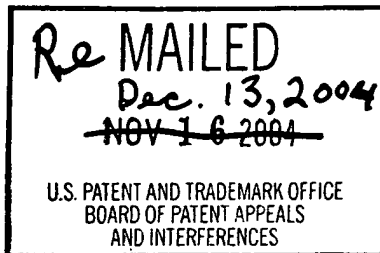


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WERNER SOBEK,
MATHIAS SCHULER and DOMINIK BAUMULLER



Appeal No. 2004-2351
Application No. 09/646,101

ON BRIEF

Before KIMLIN, OWENS and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 18-24.
Claims 25-35 have been withdrawn from consideration.

Claim 18 is illustrative:

18. An umbrella device, comprising:

a shank;

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an umbrella-like cap connected to said shank, said umbrella-like cap comprising a membrane having tensile strength and low flexural strength, and a circular base surface; and

driving means for driving said membrane, wherein said membrane defining a position of rest, wherein it droops limply around said shank, and an opened position, wherein it assumes an essentially horizontal position, said membrane assuming said opened position under the influence of centrifugal force generated due to the rotation of said membrane by said driving means.

The examiner relies upon the following references in the rejection of the appealed claims:

Fromme	3,683,441	Aug. 15, 1972
Belanger	5,127,123	Jul. 07, 1992
Ennis	5,463,788	Nov. 07, 1995

Appellants' claimed invention is directed to an umbrella device comprising an umbrella-like cap membrane having a circular base that is opened under the influence of centrifugal force resulting from the rotation of driving means.

Appealed claims 18-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ennis. Claim 22 stands rejected under 35 U.S.C. § 103(a) over Ennis in view of Belanger, whereas claim 23 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ennis alone. In addition, claim 24 stands rejected under 35 U.S.C. § 103(a) over Ennis in view of Fromme.

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We have thoroughly reviewed the respective positions advanced by appellants and the examiner. In so doing, we agree with the appellant that the examiner's rejections are not well-founded. Accordingly, we will not sustain the examiner's § 102 and § 103 rejections.

Concerning the § 102 rejection of claims 18-21 over Ennis, we concur with appellants that Ennis does not describe within the meaning of § 102 an umbrella device, as presently claimed. Ennis describes a vehicle washing apparatus that simply does not qualify as an umbrella device under even the broadest interpretation of the claim language "umbrella device." In our view, no reasonable interpretation of Ennis' automatic car washing apparatus qualifies as an umbrella device. We also agree with appellants that rotary brushes 18 and 20 of Ennis do not meet the claimed requirement for an umbrella-like cap comprising a membrane having a circular base surface. As is readily apparent in figure 3 of Ennis, brushes 18 do not have a circular base surface, and if all the brushes 18 in concert are considered to constitute a circular base surface, such combination of all of the brushes does not qualify as a membrane. Also, we find no

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merit in the examiner's reasoning that the part of Ennis' brushes which attaches to the circular shaft can be reasonably considered a membrane having a circular base surface.

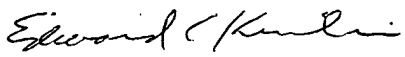
The examiner explains that "[w]ith respect to applicant's assertion that Ennis is not an umbrella as it discloses a mechanized automated vehicle washing apparatus, examiner respectively points out that the reference teaches all the claimed limitations" (page 6 of answer, last paragraph). However, we emphasize that insofar as the vehicle washing apparatus of Ennis is not an umbrella device, as specifically defined in the appealed claims, it cannot be said that the reference teaches all the claim limitations.

The "secondary" references, Fromme and Belanger, cited by the examiner in the § 103 rejections of the dependent claims, do not remedy the basic deficiency of the "primary" reference, Ennis, discussed above.


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In conclusion, based on the foregoing, the examiner's
decision rejecting the appealed claims is reversed.

REVERSED


EDWARD C. KIMLIN)
Administrative Patent Judge)


TERRY J. OWENS)
Administrative Patent Judge)


JEFFREY T. SMITH)
Administrative Patent Judge)

BOARD OF PATENT
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Application No. 09/646,101

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